JUN 2 4 1986

Y 1.1/8: 99-628

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-628

ORIGINAL

MINERAL LANDS LEASING ACT AMENDMENTS OF 1986

JUNE 11, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

COMPLETED
4/1

together with

SUPPLEMENTAL AND DISSENTING VIEWS

[To accompany H.R. 1934]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1934) entitled the "Mineral Lands Leasing Act Amendments of 1985", having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mineral Lands Leasing Act Amendments of 1986".

SEC. 2. ISSUANCE OF NEW COAL LEASES TO EXISTING LESSEES.

(a) MODIFICATION OF EXISTING PROHIBITION.—Section 2(a)(2)(A) of the Mineral Lands Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 201(a)(2)(A)) is amended to read as follows:

"(A)(i) The Secretary shall not issue a new competitive coal lease, nor shall he permit the assignment of any such lease or leases, to any person, association, corporation, or to any affiliate thereof (as defined in section 43) which holds any coal lease issued by the United States before August 4, 1976, if during the 10-year period thereafter—

"(I) coal has not been produced in commercial quantities from the lease; or

"(II) advance royalties in lieu of continued operation have not been paid under section 7(c) for such lease.

"(ii) Clause (i) applies only to new competitive coal leases issued under this Act after the enactment of the Mineral Lands Leasing Act Amendments of 1986.

71-006 O

COD

1 BEST COPY AVAILABLE

"(iii) Clause (i) shall not apply to the extent provided under section 43.

"(iv) Clause (i) shall not apply if the new competitive coal lease is issued in an emergency lease sale (as defined by the Secretary by rule).

"(v) Clause (i) shall not apply in the case of a coal lease issued prior to August 4, 1976, which have been consolidated into a logical mining unit which is producing coal in commercial quantities at the time of the issuance of the new competitive coal lease.

"(vi) Nothing in this subparagraph affects the authorities of section 30.".

(b) QUALIFICATION FOR ISSUANCE OF NEW LEASE.—The Mineral Lands Leasing Act of 1920 is amended by adding the following new section at the end thereof:

"SEC. 43. ISSUANCE OF COAL LEASES TO CERTAIN EXISTING LESSEES.

(a) QUALIFICATION FOR ISSUANCE OF NEW COMPETITIVE LEASES.—An ineligible lessee qualifies for the issuance of a new competitive coal lease notwithstanding section 2(a)(2)(A)(i), if the Secretary determines that either of the following requirements is met for each noncomplying coal lease held by the ineligible lessee:

"(1) The qualifying payment requirement of subsection (b).

"(2) The significant expenditure requirement of subsection (c).

(b) QUALIFYING PAYMENTS.—

"(1) IN GENERAL.—An inelligible lessee may meet the qualifying payment requirement for a noncomplying coal lease. To meet this requirement the terms and conditions of the noncomplying coal lease shall be amended, at the election of the lessee, to require annual qualifying payments to the Secretary in accordance with this subsection.

"(2) STARTING DATE.—Except as provided in paragraph (3), qualifying payments under this subsection shall begin within 30 days after the date on which the lessee becomes an ineligible lessee within the meaning of this section.

"(3) LATER ELECTION.—If qualifying payments do not begin by the date referred to in paragraph (2), the lessee may elect to begin making qualifying payments at a later date in a larger amount as provided in paragraph (4)(B). Such later date may not be more than 5 years after the date on which the lessee becomes an ineligible lessee within the meaning of this section.

"(4) AMOUNT.—

"(A) IN GENERAL.—If an election to make qualifying payments under this subsection for any noncomplying coal lease is made by the starting date referred in paragraph (2), the amount of the annual qualifying payment for that lease shall be determined by multiplying the payment rate in table 1 by the number of tons of recoverable coal reserves covered by the lease.

TABLE 1

Payment Year	Payment Rate
First	$0.001
Second	$0.002
Third	$0.003
Fourth	$0.004
Fifth	$0.005
Sixth	$0.006
Seventh	$0.007
Eighth	$0.008
Ninth	$0.009
Tenth	$0.010

"(B) HIGHER PAYMENT.—If an election to make qualifying payments under this section for any noncomplying coal lease is made at a date referred to in paragraph (3), the amount of the annual qualifying payment for that lease shall be $0.015 for each ton of recoverable coal reserves covered by the lease.

"(5) TERMINATION DATE.—No qualifying payment shall be required for any noncomplying coal lease after the earlier of the following:

"(A) The date of termination of the lease.

"(B) The date of relinquishment of the lease to the Secretary.

"(C) The date production in commercial quantities is achieved from the lease or from a logical mining unit into which the lease has been consolidated.

BEST COPY AVAILABLE

"(6) APPLICATION OF SECTION 35.—(A) For purposes of section 35 (relating to payments to States), a qualifying payment under this subsection shall be treated as money received from sales, bonuses, royalties, and rentals of the public lands.

"(B) In determining the amount of payments to States under section 35, the amount of such payments shall not be reduced by any administrative costs incurred by the United States.

"(7) COORDINATION WITH OTHER REQUIREMENTS.—If any person making a qualifying payment under this subsection for any lease in any year is also required to make an annual payment in lieu of diligent development under section 7(b) for that lease, the payment under this subsection shall be treated as satisfying the payment in lieu of diligent development requirement of section 7(b) for the year concerned. No qualifying payment under this subsection may be used to reduce future production royalties.

"(c) SIGNIFICANT EXPENDITURE.—To meet the significant expenditure requirement for a noncomplying coal lease the lessee must demonstrate that he has made a significant expenditure of funds (as determined by the Secretary) for exploration or planning under the lease or for development and construction of operating facilities in the mine plan area for mining on the lease, or for any combination of the foregoing. The demonstration must be made within 30 days after the date on which the lessee becomes an ineligible lessee within the meaning of this section. The expenditure shall be at least $0.055 for each ton of recoverable coal reserves covered by the lease.

"(d) DEFINITION.—As used in this section:

"(1) AFFILIATE.—The term 'affiliate', when used with respect to any entity, means any person which controls, is controlled by, or is under common control with, such entity. Such term includes any subsidiary of the entity.

"(2) INELIGIBLE LESSEE.—The term 'ineligible lessee' means a person, association, or corporation which is not eligible (by reason of section 2(a)(2)(A)(i) of this Act and section 320 of Public Law 99-190) to receive a new competitive coal lease. The term also includes any affiliate of any such entity.

"(3) NONCOMPLYING COAL LEASE.—The term 'noncomplying coal lease' means a lease issued before August 4, 1976, which under section 2(a)(2)(A)(i) and section 320 of Public Law 99-190 disqualifies the lessee from receving a new competitive coal lease.".

SEC. 3. LOGICAL MINING UNITS.

(a) NONCONTIGUOUS AREAS.—Section 2(d)(1) of the Mineral Lands Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 202a(1)) is amended by adding after "contiguous" the following: "(except that noncontiguous areas within reasonable proximity of each other and which are determined by the Secretary to be incorporated into a single operation under the effective control of a single operator may also be included in a logical mining unit)".

(b) 40-YEAR MINE-OUT REQUIREMENT.—Section 2(d)(2) of such Act is amended by striking out "which shall not be more than forty years".

(c) TOTAL ACREAGE.—Section 2(d)(7) of such Act is amended by striking out "the total acreage (both Federal and non-Federal " and substituting "the total Federal acreage".

SEC. 4. LEASE CONDITIONS.

Section 7 of the Mineral Lands Leasing Act of 1920 is amended to read as follows:

"SEC. 7. CONDITIONS OF LEASE; PAYMENTS AND ROYALTIES.

"(a) BASIC LEASE CONDITIONS.—

"(1) TERMS OF LEASE.—A coal lease issued under this Act shall be for a term of 20 years and for so long thereafter as the condition of continued operation is met.

"(2) READJUSTMENT.—Rentals and royalties and other terms and conditions of a coal lease under this Act shall be subject to readjustment at the end of its primary term of 20 years and at the end of each 10-year period thereafter.

"(3) ANNUAL RENTALS.—The Secretary shall by regulation prescribe annual rentals on coal leases issued under this Act.

"(4) ROYALTIES.—(A) A coal lease issued under this Act shall require payment of a royalty in such amount as the Secretary shall establish. The amount shall not be less than 12.5 percent of the value of coal (as defined by regulation) unless the Secretary establishes a lesser amount under subparagraph (B).

"(B) The Secretary may establish a royalty of less than 12.5 percent for coal recovered by underground mining operations or from special bituminous coal

BEST COPY AVAILABLE

mines which meet the requirements of section 527 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1277), and applicable regulations.

"(5) DILIGENT DEVELOPMENT.—(A) Each coal lease issued udner this act shall be subject to a condition of diligent development of the mine or mines (except where mining of recoverable coal reserves under the lease has been completed).

"(B) The diligent development condition shall require production of recoverable coal reserves in commercial quantities by the end of a 10-year period. The 10-year period begins at lease issuance (except that in the case of leases issued before August 4, 1976, the period begins at first readjustment after August 4, 1976). In calculating the 10-year period there shall be excluded any time during which development is interrupted by strikes, the elements, casualties, or other causes not attributable to the lessee.

"(C) Each coal lease issued under this Act shall be terminated by operation of law upon the lessee's failure to either (i) meet the condition of diligent development or (ii) make payments under subsection (b).

"(6) CONTINUED OPERATION.—(A) Each coal lease issued under this Act shall be subject to a condition of continued operation of the mine or mines (except where mining of recoverable coal reserves under the lease has been completed).

"(B) The condition of continued operation requires the production of commercial quantities of recoverable coal reserves in the years following the achievement of diligent development. The condition requires production in commercial quantities in each of the first 2 years immediately following achievement of diligent development. After this 2-year period, the condition requires an average production of commercial quantities. The average shall be computed on a 3-year basis consisting of the year in question and the 2 preceding years. In the computation of time under this subparagraph there shall be excluded any time during which development is interrupted by strikes, the elements, casualties, or other causes not attributable to the lessee.

"(7) OTHER TERMS AND CONDITIONS.—A coal lease under this Act shall include such other terms and conditions as the Secretary shall determine.

"(b) PAYMENTS IN LIEU OF DILIGENT DEVELOPMENT.—

"(1) COMMENCEMENT OF PRODUCTION WITHIN 10 YEARS.—A coal lease issued under this Act that does not meet the condition of diligent development within the required 10-year period shall not be terminated at the end of such 10-year period if payments in lieu of diligent development are made in accordance with this subsection. Such termination shall be postponed through such payments for an additional period during which such payments are made. Such additional period shall not exceed 10 years. Any such lease shall be terminated at the expiration of the additional period unless the lease is producing coal in commercial quantities at the expiration of the additional period.

"(2) AMOUNT OF PAYMENT.—Payments under this subsection shall commence with the first year of the additional period. Payments shall be equal to the following:

"(A) In the first payment year, $0.001 per ton of recoverable coal reserves.

"(B) In the second payment year, $0.002 per ton of recoverable coal reseves.

"(C) In the third payment year, $0.003 per ton of recoverable coal reserves.

"(D) In the fourth payment year, $0.004 per ton of recoverable coal reserves.

"(E) In the fifth payment year, $0.005 per ton of recoverable coal reserves.

"(F) In the sixth payment year, $0.006 per ton of recoverable coal reserves.

"(G) In the seventh payment year, $0.007 per ton of recoverable coal reserves.

"(H) In the eighth payment year, $0.008 per ton of recoverable coal reserves.

"(I) In the ninth payment year, $0.009 per ton of recoverable coal reserves.

"(J) In the tenth payment year, $0.01 per ton of recoverable coal reserves.

"(3) APPLICATION OF SECTION 35.—For purposes of section 35 of this Act (relating to payments to States), a payment under this subsection shall be treated as money received from sales, bonuses, royalties, and rentals of the public lands.

BEST COPY AVAILABLE

"(4) COORDINATION WITH OTHER REQUIREMENTS.—No payment in lieu of diligent development under this subsection may be used to reduce future production royalties.

"(c) ADVANCE ROYALTIES IN LIEU OF CONTINUED OPERATION.—

"(1) SUSPENSION OF CONDITION.—The Secretary of the Interior may suspend the condition of continued operation under this subsection. Such suspension may not continue for more than a total of 10 years. The Secretary may suspend the condition only if advance royalties are paid under this subsection and if he determines that the public interest will be served by the suspension. The Secretary may terminate the suspension at any time. The Secretary shall provide 6 months notification to the lessee of any such termination.

"(2) AMOUNT OF ADVANCE ROYALTIES.—Advance royalties under this subsection shall be no less than the production royalty rate which would otherwise be applied. The advance royalties shall be computed on a fixed reserve to production ratio (determined by the Secretary).

"(3) RECOUPABILITY.—The amount of any production royalty for a lease in any year shall be reduced (but not below zero) by the amount of any advance royalties paid under this subsection for such lease. To the extent that advance royalties have been used to reduce production royalties for any year they may not be used to reduce production royalties again in a later year. No advance royalty paid during the initial 20-year term of lease shall be used to reduce a production royalty after the 20th year of a lease.

"(d) OPERATION AND RECLAMATION PLAN.—Within a reasonable period (as determined by the Secretary) prior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.

"(e) EFFECTIVE DATE.—Except as provided in subsection (f), the provisions of this section shall take effect with respect to all coal leases issued or readjusted under this Act after August 4, 1976.

"(f) SPECIAL EFFECTIVE DATE FOR CERTAIN LEASES.—

"(1) PRE-76 LEASES.—This subsection applies to leases issued before August 4, 1976, (hereinafter referred to as 'pre-1976 leases'). The 12.5 percent royalty rate requirement of subsection (a)(4)(A) (or the royalty rate requirement of subsection (a)(4)(B)) shall take effect for a pre-1976 lease only as provided in this subsection.

"(2) READJUSTMENT AFTER ENACTMENT.—If the first readjustment of a pre-1976 lease takes place on or after enactment of the Minerals Lands Leasing Act Amendments of 1986, the royalty rate requirements of subsection (a)(4) shall not take effect until 10 years after such readjustments.

"(3) EARLIER READJUSTMENTS.—For a pre-1976 lease readjusted before enactment of the Mineral Lands Leasing Act Amendments of 1986, the royalty rate requirement of subsection (a)(4) shall not take effect until 10 years after such readjustment if the royalty rate is the subject of one or both of the following—

"(A) A protest or objection pending (as of the date of enactment of the Mineral Lands Leasing Act Amendments of 1985) before the Bureau of Land Management or the Interior Board of Land Appeals.

"(B) An action pending (as of such date of enactment) in a United States District Court or Circuit Court of Appeals.

"(4) PHASE-IN OF ROYALTY RATE.—In the case of any lease referred to in paragraph (2) or (3), the Secretary shall by rule or order establish royalty rates for each year before the royalty rate requirement of subsection (a)(4) takes effect. The royalty rate for each such year shall provide for equal annual incremental increases. The starting point for the first annual incremental increase shall be the royalty rate in effect on August 4, 1976. The increment for each year shall be established at a level such that a royalty rate in accordance with the requirements of subsection (a)(4) shall be in effect at the end of 10 years after the readjustment referred to in paragraph (2) or (3), as the case may be.".

SEC. 5. DEFINITIONS AND SHORT TITLE.

The Mineral Land Leasing Act of 1920 is amended by adding the following new sections after section 43:

"SEC. 44. DEFINITIONS.

For the purposes of the coal leasing provisions of this Act—

BEST COPY AVAILABLE

"(1) COMMERCIAL QUANTITIES.—The term 'commercial quantities' means one percent of the recoverable coal reserves under a lease or within a logical mining unit.

"(2) DILIGENT DEVELOPMENT.—The term 'diligent development' means the requirement established under section 7(a)(5) of this Act.

"(3) CONTINUED OPERATION.—The term 'continued operation' means the requirement established under section 7(a)(6) of this Act.".

"SEC. 15. SHORT TITLE.

"This Act may be cited as the 'Mineral Lands Leasing Act of 1920'.".

SEC. 6. CONSIDERATION OF ADVERSE EFFECTS ON OTHER COAL.

Section 2(a)(3)(C) of the Mineral Lands Leasing Act of 1920 is amended by inserting the following after the first sentence thereof: "The Secretary shall also consider any adverse effects on coal produced from private lands due to the potential displacement of such coal from historical markets as a result of lease issuance. As used in the preceding sentence, the term 'private lands' means lands other than lands owned by the United States and the term 'historical market' means any market which has largely been served and can reasonably and economically be served by coal from private lands.".

SEC. 7. REGIONAL COAL TEAMS.

Section 2(a)(3) of the Mineral Lands Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 201(a)) is amended by inserting the following new subparagraph at the end thereof:

"(F) At the request of the Governor of the State in each coal region containing significant deposits of coal owned by the Federal Government, the Secretary shall establish a joint Federal-State Regional Coal Team which shall guide all phases of Federal competitive coal leasing procedures and serve as a forum for resolving regional conflicts involving coal leasing. The responsibilities of the teams shall include guiding the delineation of potential lease tracts, ranking and selecting tracts, conducting environmental analysis, recommending to the Secretary tracts to be offered for lease, timing of sales and lease stipulations, and evaluating the adequacy of data to support leasing decisions. The teams shall, at regular intervals, advise the Secretary on methods to improve the efficiency and effectiveness of the Federal coal leasing program. The teams shall take all necessary steps to inform the public of pending decisions, to solicit the views of the public and to respond to comments received. The Secretary may accept the recommendations of the team except in the case of an overriding national interest or in the case that he accepts the advice of the affected State Governor pursuant to this section. If the Secretary does not accept the recommendation of the team, the Secretary shall publish in the Federal Register his reasons.".

SEC. 8. USE OF SHORT TITLE.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal of a section or other provision of the Mineral Lands Leasing Act of 1920, the reference shall be considered a reference to the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437).

Amend the title so as to read: "Mineral Lands Leasing Act Amendments of 1986".

PURPOSE

The purpose of H.R. 1934 as amended is to provide for the orderly development of federal coal and other onshore mineral resources leased under the Mineral Lands Leasing Act of 1920 by modifying the section 2(a)2(A) prohibition on new onshore mineral lease issuance to certain leaseholders and by providing for diligent development criteria capable of meeting the energy needs of the Nation in a fashion consistent with the fair and proper management of public resources.

BEST COPY AVAILABLE

Background

Two provisions of the Mineral Lands Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1975 (FCLAA), are the major items which would be modified by H.R. 1934, as recommended by the Committee.

The first is section 2(a)2(A) of the 1920 Act (section 3 of FCLAA) which prohibits the issuance of a new federal onshore mineral lease to any lessee who holds and has held a federal goal lease issued prior to 1976 for 10 years after enactment of FCLAA (August 4, 1976) without producing coal from the lease in commerical quantities. The 10-year period originally ended August 4, 1986, but was extended to December 31, 1986, by the Continuing Resolution for fiscal year 1986 and the Department of the Interior's definition for "commercial quantities" is production of one percent of the recoverable coal under lease.

The second is section 7 of the 1920 Act (section 6 of FCLAA) which requires that coal leases acquired after FCLAA (1976) be brought into commercial quantities production within 10 years after lease issuance, or the lease would be terminated. This provision is known as "diligent development." While the 10-year production requirement was added by FCLAA in 1976, it also applies to leases issued prior to 1976 at the time of the first lease readjustment after 1976 (leases have 20-year primary terms and are readjusted for periods of 10 additional years). By 1986, the Department of the Interior reports that more than 60 percent of pre-1976 leases will be readjusted and by 1990, virtually all of these leases will have been readjusted, and as such, be brought under the 10-year diligence clock.

Both of these provisions, added to the Mineral Lands Leasing Act of 1920 by FCLAA in 1976, were aimed at eliminating speculation in federal coal leases and the increased production of coal from these leases to reduce the Nation's dependence on foreign oil. However, subsequent events such as changing market conditions and lease ownership patterns indicate that the impact of these provisions will be more stringent and restrictive than expected.

Need for Legislation

Since 1976, changes in coal market conditions have dramatically reduced speculation and lease ownership by non-coal producers has decreased, shifting almost exclusively to lessees whose fundamental business includes coal production. As such, the "anti-speculation" policy of FCLAA's section 3 no longer is appropriate in its present form.

Implementation of section 3 next year would prohibit the Secretary of the Interior from issuing new onshore oil and gas (as well as other mineral) leases to any company holding a pre-1976 coal lease which is not producing coal in commercial quantities. By precluding many of the multi-mineral and coal-only produces from bidding on new onshore mineral leases, competition would be reduced for not only new coal leases, but for oil and gas leases as well. For coal, oil and gas especially this could have an adverse impact on the amount of bonus bids received by eliminating competition for these leases. Development of oil and gas reserves would also be im-

BEST COPY AVAILABLE

peded resulting in reduced federal and state royalty receipts and increased dependency on foreign energy imports. In addition, a coal leaseholder who needs to acquire a new coal lease to keep a mine in operation (such as a maintenance lease) would be precluded from doing so if the leaseholder also holds a pre-1976 nonproducing lease.

Besides coal, oil and gas, other minerals which could not be leased to a company not in compliance with section 3 include oil shale, potassium, phosphate, sodium, native asphalt, solid and semi-solid bitamen and bituminous rock—all leased under the 1920 Act.

In effect, section 3 holds segments of the oil and gas and onshore minerals industry hostage to the fortunes of the coal market.

According to testimony presented by the Department of the Interior and the agency's "Analysis of Options for Amending the Mineral Leasing Act Sections 2(a)2(A) and 7," dated September 1985, of the 516 pre-FCLAA coal leases, approximately 224 leases containing 5.23 billion tons of coal will not be in compliance with section 3 by August 4, 1986 (extended to December 31, 1986, by P.L. 99-190). The states most affected by section 3 would be Utah with 84 leases, Wyoming with 31 leases, Colorado with 42 leases, Montana with 6 leases, New Mexico with 10 leases and North Dakota with 9 leases that would not be in compliance. The Department's analysis indicates that of these 224 leases, 104 (46%) are held by oil and gas companies, 36 (16%) by electric utilities, 36 (16%) by mining companies, 15 (7%) by steel firms and 33 (15%) by miscellaneous industry.

Another analysis of these leases conducted by the Office of Technology Assessment estimates that 244 leases with over 6.2 billion tons of coal will not comply with the section 2(a)2(A) requirement and found an additionial 56 leases with 1.6 billion tons of coal where compliance was uncertain. Of these 300 leases, 197 have section 2(a)2(A) dates of August 4, 1986 (extended to December 31, 1986, by P.L. 99-190); 49 will fall under the new lease prohibition between August 4, 1986, and August 4, 1991; and 54 have section 2(a)2(A) dates after August 4, 1991. Under the current interpretation of section 2(a)2(A), the prohibition on new lease issuance would not be imposed at the same time on nonproducing leases as lease assignments restart the 10-year period.

Section 7, by requiring production within 10 years of lease issuance, ignores market conditions and could force production at a time when the market could not absorb increased levels of production. Being an arbitrary deadline, the 10-year period leaves little leeway for the logistics of mine development. Additional time, even under a good faith effort to comply, may be needed due to administrative or judicial delays, to assemble coal properties and surface rights, to get a permit and to negotiate contracts. It should be noted that FCLAA's 10-year diligence requirement was enacted prior to passage of the Surface Mining Control and Reclamation Act of 1977 which has lengthened the time to bring coal leases into production due to its stringent permitting process.

The Linowes Commission Report on "Fair Market Value Policy for Federal Coal Leasing," dated February 1984, recommended that:

BEST COPY AVAILABLE

> For post-1976 leases the 10-year diligent development requirement should continue in place but it is recommended that Congress consider allowing a 10-year extension to be provided on the payment of advance royalties on an escalating basis. This escalation basis should be determined at a level designed to stimulate timely development.

and—

> For pre-1976 leases the lessee should begin paying advance royalties at the time of the next lease readjustment, and on the same schedule as may be paid for post-1976 leases after 10 years from lease issuance.

With respect to section 3, the Linowes Commission concluded:

> The recommendation made above for advance royalties for pre-1976 leases, if adopted, would eliminate the need for section 3. The penalties of section 3 would depress bidding competition and leave federal coal leases in the hands of less efficient coal producers. It was the stated judgment of Commissioners Linowes and Walsh that the Congress should abolish the provisions of section 3 of the Federal Coal Leasing Amendments Act of 1976.

The Department of the Interior is in basic agreement with the recommendations of the Linowes Commission regarding the modification of 10-year diligent development requirement and section 3 and favors legislative action.

Overview of Legislation

As amended by the committee, H.R. 1934 does not repeal section 3 of the Federal Coal Leasing Amendments Act of 1976 but modifies the prohibition on new mineral lease issuance to holders of undeveloped coal leases issued prior to 1976 so that it applies only to new competitive coal leases. These "ineligible" coal lessees would be able to qualify for new competitive coal leases while holding noncomplying coal leases by making qualifying payments on a tonnage basis contained in all pre-1976 nonproducing ("noncomplying") coal leases held, or by showing that a significant expenditure in mine development has been made on the lease. Exempted from the section 3 prohibition would be new emergency coal leases (bypass and maintenance) and pre-1976 coal leases consolidated in a logical mining unit which is producing coal in commercial quantities would not be treated as noncomplying leases.

With respect to section 7 of the Mineral Lands Leasing Act of 1920, H.R. 1934 as amended would allow a lessee who does not produce coal in commercial quantities within the 10-year diligent development period, rather than face lease termination, to elect to continue holding the lease by making payments in lieu of diligent development.

The bill as amended would also allow noncontiguous areas to be incorporated into a logical mining unit if they are within reasonable proximity of each other and under the effective control of a single operator and incorporated into a single opreation. In addition it provides that the total acreage limitation in a LMU applies

BEST COPY AVAILABLE

only to acreage contained in federal leases and strikes the 40-year mine-out requirement for LMUs. H.R. 1934 as amended would grant a 10-year phase-in of the production royalty rate requirement of section 7(a)(4) for certain pre-1976 leases.

Committee Views

With this legislation, the Committee is attempting to avoid the disruption of the federal onshore mineral leasing program as a result of the implementation of section 3 of the Federal Coal Leasing Amendments Act of 1975 (FCLAA) in recognition of the fact that lease ownership patterns and market conditions have changed since enactment of that statute. In light of the passage of other laws subsequent to the 1976 leasing amendments governing the manner in which coal is developed, primarily the Surface Mining Control and Reclamation Act of 1977, the Committee, while maintaining the integrity of the diligent development condition of the Mineral Lands Leasing Act of 1920 (MLLA), finds that additional time beyond the 10-year commercial quantities production deadline may be necessary to meet the requirements of the mine permitting process, to negotiate the consolidation of leases into a viable mining operation and to secure coal supply contracts.

To establish what H.R. 1934, as recommended, seeks to accomplish, the differences between section 3 of FCLAA (section 2(a)2(A) of the MLLA) and section 6 of FCLAA (section 7 of the MLLA) must be clearly understood. In the 1976 Amendments, Congress chose not to extinguish retroactively the pre-existing rights represented by old leases. Instead, it imposed a new sanction—the section 3 prohibition on new mineral lease issuance—to stimulate development of old leases basically within the same time frame as was being imposed on new leases under the diligent development requirement of section 7. Because retroactive application could effectively impair existing rights, such a scheme would have raised serious questions as to FCLAA's constitutionality under the Fifth Amendment as a taking of property without just compensation. It is for this reason that the "due diligence" condition of section 7 which required the production of coal in commercial quantities within 10 years of lease issuance (added by the 1976 Amendments) is applied at the end of the primary term of a pre-1976 lease at the time it is up for its first post-1976 readjustment.

As such, for leases issued prior to the enactment of FCLAA, two provisions seeking to spur development come into play, the section 3 prohibition on new lease issuance if commercial quantities production is not achieved after 10 years of the date of enactment of FCLAA and, upon the first post-1976 readjustment, the MLLA's diligent development requirement of section 7 as amended by FCLAA.

FCLAA's section 3 new mineral lease prohibition constituted an "anti-speculation" policy as this type of activity and lease ownership by non-coal entities had plagued the federal coal leasing program, especially due to the fact that no clear definition of diligent development was provided in law or for that matter, administratively. Because changes in coal market conditions have dramatically reduced, if not completely eliminated, coal lease speculation and

BEST COPY AVAILABLE

current lease ownership patterns have shifted to lessees whose fundamental business includes coal production, the Committee believes that section 3 is no longer appropriate in its present form.

Of particular concern is the adverse impact on competition for federal mineral leases and on federal mineral receipt collections which would result due to the enforcement of the section 3 prohibition on all new onshore mineral leases as currently devised. A decision against noncomplying coal lease relinquishment would mean a reduction in the number of firms that may compete for federal mineral leases. As a consequence, bonus bids for new mineral leases including those for oil and gas tracts, may not be as high as they otherwise would be and the relinquishment of coal leases would reduce rental payments and forego the possibility of production royalty collections. The Committee also notes that enforcement of section 3 in its present form would impose a significant administrative burden on the Bureau of Land Management.

To avoid these harsh consequences, but at the same time recognizing that a number of pre-1976 leases are still not in commercial quantities production, the Committee has chosen to retain the FCLAA section 3 prohibition on new competitive coal leases only. Because the potential exists under the bill to generate new and additional mineral receipts to state governments and the federal Treasury from the noncomplying coal leases, the Committee has set forth a regime by which an ineligible lessee may still be issued a new coal lease if certain qualifications are met.

As such, notwithstanding section 3, an ineligible lessee may qualify for future new coal lease issuance while holding a noncomplying coal lease if qualifying payments are made or by meeting the requirements of the significant expenditure test, although the lessee would still be free to simply relinquish the lease to the Secretary of the Interior.

Under the new section 43 added by the bill a lessee must decide whether to qualify for future new coal leases under either the qualifying payments or significant expenditure test, or any combination thereof. This decision must be made within 30 days of the lessee's FCLAA section 3 date which, due to the elimination of language in current law that has been interpreted as restarting the 10-year period for any assigned leases, is December 31, 1986. This "fish or cut bait" requirement forces an early decision by the lessee as to whether he will make a good faith effort to get into production.

The qualifying payments, as well as the payments in lieu of diligent development relating to MLLA's section 7, are deemed to provide an incentive to either produce coal or relinquish the lease. It is for that reason an escalating payment was selected. The longer a lessee fails to produce, the greater the penalty becomes. The payment levels were formulated to give a lessee the opportunity to move into production. While the initial year amount in aggregate terms is high enough to constitute a penalty, it should not prevent a lessee from making a good faith effort to rapidly move into production. As such, the payments not only provide receipts to the states and the federal government, but will ensure that rental payments are still made as well as future production royalties. The Committee found that a higher payment scheme would not meet

BEST COPY AVAILABLE

these criteria. It should also be noted that since both the qualifying payments and payments in lieu of diligent development are not creditable against future production royalties, receipt levels are not diminished and the payments are true penalties. It is the Committee's understanding that payments made in advance of mining that are not recoupable upon production are not deductible by the payor, providing no tax advantage.

The Committee understands there is concern that certain outstanding and nonproducing coal leases issued prior to FCLAA may be located in environmentally sensitive areas and section 3 is viewed in some quarters as a mechanism to force relinquishment of these leases to the Secretary of the Interior. Obviously, these leases were issued prior to both FCLAA, which requires comprehensive land use plans to be completed before a lease sale can occur, and to the Federal Land Policy Management Act of 1976 (FLPMA), which also deals with land use planning, and were not subject to the stringent pre-leasing environmental screening process applied under the current federal coal leasing program.

However, with respect to leases issued prior to 1976, before development can occur the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) must be complied with, as well as a number of other federal statutes (approximately 11) including the Federal Water Pollution Control Act. SMCRA established a detailed national program for addressing the environmental effects of coal mining and of particular importance are the law's requirements that surface coal mining be conducted in accordance with environmental protection performance standards. These performance standards require, among other things, the restoration of disturbed land to original or better condition, restoring land to the approximate original contour of the land surface, stablizing and protecting all surface areas, protecting prime farmlands, and reducing disturbances to the existing hydrologic balance.

Further, SMCRA established a procedure for designating lands unsuitable for all or certain types of coal mining operations. Specific unsuitability criteria is provided which defines categories of land that must be protected from, or during, mining. In this regard, the Federal Lands Review required under section 522(b) of SMCRA applies to all Federal leases, regardless of the date on which they were issued and the Office of Surface Mining (OSM) is responsible for certifying that the Federal Lands Review is complete before a mining permit can be approved.

At the time of mine permit application review, leased lands are subject to application of the mandatory unsuitability standard for reclaimability set out in section 522(a) of SMCRA, of the various mandatory standards found in section 522(e), and to the alluvial valley floor restrictions found in section 510(b)(5). At that time, OSM would also consider resource values protected under the discretionary standards in section 522(a)(3) and could adequately protect these values through stipulations attached to the approved mining permit. Leased lands are also subject to the unsuitability petition process under section 522(c).

The point is that despite the fact that coal leases issued prior to FCLAA and FLPMA were not subjected to the general pre-leasing environmental planning and assessment regime of these statutes,

BEST COPY AVAILABLE

SMCRA's stringent environmental protection requirements must be met in order for a lessee to receive a mining permit and actually begin mining on the lease.

The Committee also notes that during the hearing on this bill, representatives of the environmental community offered certain constructive recommendations to assist the Committee's deliberations on modifying section 3. The "basic principles" advanced were that leases with only speculative development potential must be effectively segregated from those whose development is actively underway; the relinquishment of environmentally unsound leases should be encouraged; an early "fish or cut bait" decision should be required; no new competitive advantage should be bestowed upon some sectors of the industry; and, the terms of pre-FCLAA leases should be brought into equivalence with those lease terms of new leases with reserve holders prevented from obtaining excessive windfall profits.

The Committee believes that H.R. 1934, as amended, incorporates these criteria. The section 43 "qualifying payments" of the bill will effectively cause the relinquishment of coal leases with only speculative development potential or where a SMCRA permit would be difficult or impossible to obtain due to environmental considerations and an early "fish or cut bait" decision must be made by lessees on their section 3 date. In addition, the bill specifically states that pre-FCLAA leases must comply with FCLAA's diligent development condition commencing with the first post-FCLAA readjustment. Further, both the qualifying payments and payments in lieu of diligent development ensure a return to the government in the form of mineral receipts and are structured so as not to allow any profiteering.

The Committee, as much, does not find any adverse environmental effects which would ensue under the enactment of this legislation. While the bill's need is premised on the fact that lease ownership patterns and market conditions have dramatically changed since enactment of FCLAA, the basic thrust of current law is being preserved. In this era of severe federal budget deficits, it behooves the Congress to mitigate any loss of mineral receipts that may occur under current law and with this bill, to enhance the flow of mineral-related payments to the states and federal government.

With this legislation, the Committee is seeking to firmly establish that pre-1976 federal coal leases must be readjusted to the diligent development condition of section 7 of the 1920 Act as amended by FCLAA at the time of the lease's first post-1976 readjustment. H.R. 1934 as amended specifically states that the condition of diligent development shall require production of coal in commerical quantities by the end of the 10-year period of lease issuance or in the case of a lease issued prior to August 4, 1976, by the end of the 10-year period from the lease's first post-1976 readjustment. However, because of delays which may occur even under a good faith effort to get into production, and in consideration of the realities of the marketplace, the Committee believes an additional 10-year period should be afforded to lessees upon the election of annual payments in lieu of diligent development. The Committee recognizes that the question of whether the higher production royalty rate than what had previously been in existence imposed by

BEST COPY AVAILABLE

FCLAA should be applied to leases issued prior to 1976 at the time of first post-1976 readjustment is the subject of protest and objection before the Bureau of Land Management, the Interior Board of Land Appeals and litigation before various judicial bodies. While FCLAA imposed the 12.5 percent production royalty rate (or a lesser rate for coal recovered by underground mining operations as established by the Secretary) in 1976, it is unclear in both the statute and legislative history whether that royalty rate was also to be applied to pre-1976 leases, and if so, at what point.

The Committee in H.R. 1934 is seeking to resolve this question by providing for the 12.5 percent production royalty (or a rate less than 12.5 percent for underground mining operations as established by the Secretary) to be applied to pre-1976 coal leases, but at the end of a 10-year period from the first post-1976 readjustment of these leases during which time the rate would be phased in. The Committee has adopted this phase-in approach so as not to disrupt existing coal production and markets and to mitigate the rapid inflation of consumer electric rates that might otherwise occur. This provision only applies to pre-1976 coal leases depending on their readjustment status. Nothing in this provision, however, affects the authorities of the Secretary of the Interior under section 39 of the 1920 Act.

The Committee is concerned that the Interior Department's interpretation of the authority it already possesses, under existing law, to reduce federal coal royalties below a statutory minimum when appropriate may be unduly restrictive. Section 39 of the Mineral Lands Leasing Act provides that:

> The Secretary of Interior, for the purpose of encouraging the greatest ultimate recovery of coal . . . and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, . . . whenever in his judgment it is necessary to do so in order to promote development, or whenever in in his judgment the leases cannot be successfully operated under the terms provided therein. . . .

When the House was considering the 1976 coal leasing amendments, Members expressed concern that the proposed minimum royalty of 12.5% could be too high in some cases. However, assurances were given that the Secretary could afford lessees relief in such circumstances under section 39, and the 12.5% royalty was approved in reliance on those assurances. Unfortunately, since 1976 the Department has interpreted section 39 so narrowly as to make it virtually an empty promise. For example, under the Department's proposed royalty reduction guidelines, the impact of high royalties upon the ultimate purchasers of the coal would be completely ignored when a reduced royalty is being considered. Indeed, the ability of a federal lessee to pass royalty increases through to its customers under long-term purchase agreements would be grounds for denial of an otherwise appropriate royalty reduction. Moreover, under the proposed guidelines, a royalty reduction once granted would expire after three years, regardless of whether the conditions that had justified its issuance continued.

BEST COPY AVAILABLE

Collectively, these and other self-imposed restrictions on the Secretary's royalty reduction authority under section 39 appear to have needlessly limited that section's usefulness as a remedy when circumstances exist which may justify some relief from a statutory minimum royalty rate. As such, the Committee urges the Department to reexamine its royalties reduction guidelines.

Section-by-Section Analysis

Section 1 provides a short title for the Act, the "Mineral Lands Leasing Act Amendments of 1986."

Section 2 amends section 2(a)2(A) of the Mineral Lands Leasing Act of 1920 relating to the issuance of new coal leases to existing lessees and sets forth qualifications for issuance of new leases to lessees affected by this section in a new section 43. The bill provides, as does current law, for a prohibition on new lease issuance to any person, association, corporation of affiliate which holds a coal lease issued prior to August 4, 1976 (date of enactment of the Federal Coal Leasing Amendments Act of 1976) for a 10-year period from that date if such entity has not produced coal in commercial quantities from the lease. However, the legislation limits the prohibition to new competitive coal leases only rather than to all mineral leases issued under the 1920 Act. Also prohibited is the assignment of coal leases to lessees affected by this section. Deleted from current law is the "has held" language which has been interpreted as restarting the 10-year period for leases which have been assigned to other leaseholders. As such, pre-1976 leases which have been assigned now must comply with this section within the original 10-year period which effectively would place all nonproducing pre-1976 coal leases under the prohibition of this section on December 31, 1986. A number of exceptions to the prohibition on new competitive coal lease issuance are provided. First, emergency leases are exempted from being defined, for the purpose of this section only, as a new competitive coal lease and could be issued to an ineligible lessee who otherwise has not qualified under section 43. Secondly, due to the use of the term "competitive coal lease" a preference right lease could be issued to an ineligible lessee as well. Third, a coal lease could be issued to an ineligible lessee as well. Third, a coal lease that has been consolidated into a logical mining unit which is producing coal in commercial quantities does not cause the prohibition on new lease issuance to be applied. Fourth, a lessee could avoid the new lease issuance prohibition by meeting the qualifying requirements under section 43. It must be noted that nothing in this section affects the authority of the Secretary of the Interior to accept lease relinquishment under section 30 of the 1920 Act.

A new section 43 is added to Mineral Lands Leasing Act of 1920. The terms "ineligible lessee" and "noncomplying coal lease" are used in reference to lessees affected by the prohibition of section 2(a)2(A) and the nonproducing coal leases issued prior to August 4, 1976, they hold. An ineligible lessee may qualify for the issuance of a future new competitive coal lease, notwithstanding the prohibition of section 2(a)2(A), if the lessee agrees to make qualifying pay-

BEST COPY AVAILABLE

ments or meets the significant expenditure requirement. Combinations of these qualifying options may be used.

In order to meet the qualifying payments requirement, the lessee would have to elect within 30 days of the date of falling under the section 2(a)2(A) prohibition to amend the terms and conditions of the noncomplying coal lease to require annual qualifying payments which commence at 1/10 cent per ton of recoverable coal reserves contained in the complying coal lease and increase in equal annual increments to 1 cent per ton of coal over a 10-year period.

In order to meet the significant expenditure requirement, the lessee would have to, within 30 days of the date falling under the section 2(a)2(A) prohibition, show that he has expended funds for exploration or planning under the lease or for development and construction of operating facilities for mining on the lease in an amount at least equivalent to 5.5 cent per ton of coal contained in the lease. This is the cumulative amount that would have paid on a per tonnage basis over the entire 10-year qualifying payment period if that option had been selected.

If the ineligible lessee does not decide to make the qualifying payments or meet the significant expenditure requirement within 30 days of the date of falling under the section 2(a)2(A) prohibition, for a period of 5 years from that date the ineligible lessee may still be able to elect to make a qualifying payment, but at the higher annual amount of 1.5¢ per ton of recoverable coal reserves contained in the noncomplying coal lease. This amount represents a retroactive payment, on a tonnage basis, over a 5-year period from the lessee's section 2(a)2(A) date under the escalating payment formula. However, there can be no prorating of the higher payment amount. Even if a lessee elects to make this payment three years after the section 2(a)2(A) date, the amount would still be an annual 1.5¢ per ton payment.

Provision is also made to coordinate the qualifying payments of this section with payments that may be made under section 7(b). If any ineligible lessee begins making payments under this section and at a later date elects to make payments in lieu of diligent development under section 7(b) rather than face lease termination, the qualifying payments of this section shall be treated as satisfying the requirement of section 7(b) for the year concerned and would continue to be made under the schedule set forth in subsection (b)(4)(A) or (b)(4)(B), whichever may be the case, as long as the noncomplying coal lease is held. If such a lease is still held at the end of the 10-year qualifying payment schedule set forth in subsection (b)(4)(A), then the lessee would begin making the payments in lieu of diligent development starting in the year, and at the level, the lessee would otherwise have been paying if no payments under section 43 had been made. If the lessee had elected to make the later election at the higher payment amount of subsection (b)(4)(B), those payments would continue as long as a noncomplying coal lease is held, but in no event beyond a 10-year period from the date which the payments commenced after which the lessee would begin making the payments in lieu of diligent development for the year concerned.

The qualifing payments under this section would terminate after the earlier of the termination of the noncomplying coal lease, relin-

BEST COPY AVAILABLE

quishment of the lease, or the date production in commercial quantities is achieved from the lease or from a logical mining unit into which the lease has been consolidated. If a noncomplying coal lease for which payments are being made under this section is subsequently assigned, the new leaseholder would continue to make the payments pursuant to the amended terms and conditions of the lease. No payments under this section may be used to reduce future production royalties.

Any payments made under this section shall be treated as money received from sales, bonuses, royalties and rentals of the public lands as provided by section 35 of the 1920 Act. In determining the amount of payments to the states, administrative costs shall not be deducted. This provision applies to all mineral receipts collected and distributed to the states under section 35.

As used in this section, the term "noncomplying coal lease" pertains only to a lease issued before August 4, 1976, which under section 2(a)2(A) disqualified the lessee from receiving a new competitive coal lease. The term "ineligible lessee" means a person, association, corporation not eligible by reason of section 2(a)2(A) to receive a new competitive coal lease and the term includes any affiliate of any such entity. The term "affiliate" when used with respect to any such entity means any person which controls, is controlled by, or is under common control with, such entity including any subsidiary of the entity. The definition of the term "affiliate" is intended to make "control" the key concept through which ownership of a Federal coal lease can be attributed to related corporate entities. Therefore, when a chain of corporate ownership is involved, the question is whether a given corporation is "controlled by or is under common control with" a related corporation and this would have to be determined on a case-by-case basis. The Secretary should look to general concepts relating to the power to direct policies without the concurrence of other shareholders as an important criterion for ascribing control.

Section 3 amends section 2(d) of the Mineral Lands Leasing Act of 1920 relating to logical mining units. Existing law is amended so that noncontiguous areas within reasonable proximity of each other and which are incorporated into a single operation under the control of a single operator may also be included in a logical mining unit. The forty-year mine-out requirement for LMUs is repealed and the acreage requirement for LMUs is modified so as to take into account only the acreage of Federal coal leases.

Section 4 amends section 7 of the Mineral Lands Leasing Act of 1920 relating to lease conditions. Current law lease conditions remain basically unchanged with respect to term of lease, annual rental and royalties. However, provision is made allowing the Secretary the discretion to establish a royalty of less than 12.5 percent for coal recovered from special bituminous coal mines which meet the requirements of section 527 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1277). In formulating such royalty rate, the Secretary shall compare the cost of coal extraction from a special bituminous coal mine with coal extraction costs for typical surface and underground coal mines in the region and on that basis, proportionately reduce the 12.5 percent royalty rate

BEST COPY AVAILABLE

but in no event at a rate less than that prescribed for underground coal mines.

Each lease must meet a condition of diligent development and continued operation, except where mining of recoverable coal reserves under the lease has been completed. Diligent development requires the production of recoverable coal reserves in commercial quantities by the end of a 10-year period from lease issuance, except that in the case of leases issued before August 4, 1976, the 10-year period begins at first readjustment after that date. As in current law, in calculating the 10-year period, there shall be excluded any time during which development is interrupted by strikes, the elements and casualities. This provision is expanded to include interruptions due to "other causes" not attributable to the lessee and the same language is applied to the condition of continued operation. These "other causes" would primarily be due to administrative delays in the permitting process or delays caused by litigation. The condition of continued operation requires the production of commercial quantities of recoverable coal reserves in the years following the achievement of diligent development except where mining of recoverable coal reserves under the lease has been completed.

If the condition of diligent development is not met, the lease is terminated unless the lessee makes payments in lieu of diligent development. These payments commence at 1/10 cent per ton of recoverable coal reserves in the 11th year after lease issuance (or in the case of a lease issued before August 4, 1976, at the end of 10 years after first post-1976 readjustment) and increase in equal annual increments to 1 cent per ton of recoverable coal reserves under lease over a 10-year period. Upon the achievement of production in commercial quantities, or lease relinquishment, the payments would be terminated. If by the end of the additional 10-year period commercial quantities production has not been achieved, the lease shall be terminated. The payments may not be used to reduce future production royalties and shall be treated as money received from sales, bonuses, royalties and rentals from public lands as provided by section 35 of the 1920 Act. Advance royalties in lieu of continued operation are retained from current law.

The requirement that an operational reclamation plan be submitted 3 years after lease issuance is repealed. However, such a plan must be submitted within a reasonable period prior to taking any action which would cause a significant disturbance to the environment. The provisions of this section affect coal leases issued or readjusted after August 4, 1976, except as provided under subsection (f).

A special production royalty effective date is provided for a certain class of leases. For any lease issued before August 4, 1976, and readjusted for the first time after the date of enactment of the Mineral Lands Leasing Act of 1985, the production royalty rate requirement of subsection (a)(4) shall not take effect until 10 years after such readjustment and for those leases issued before August 4, 1976, required to be readjusted before enactment of the Mineral Lands Leasing Act of 1985, but for which the production royalty rate requirement of subsection (a)(4) is the subject of a protest or objection pending before the Bureau of Land Management or the

BEST COPY AVAILABLE

Interior Board of Land Appeals or an action pending before a U.S. District Court or Circuit Court of Appeals as of such date of enactment, the production royalty rate requirement of subsection (a)(4) shall not take effect until 10 years after such readjustment. For these leases, the Secretary shall establish an equal annual phase-in over a 10-year period of the subsection (a)(4) production royalty rate commencing on the first post-1976 readjustment date and using as the starting point for the first annual incremental increase the royalty rate in effect on August 4, 1976. For those leases meeting the criteria of this subsection that have been readjusted before enactment of this subsection, the Secretary shall prorate the phase-in accordingly. Nothing in this subsection affects the authorities of the Secretary under section 39 of the 1920 Act, nor the other lease terms and conditions not relating to royalty payments of this section.

Section 5 defines terms used in the Act of the purposes of its coal leasing provisions for "commercial quantities," "diligent development," and "continued operation," and provides a short title for the Act of February 25, 1920, the "Mineral Lands Leasing Act of 1920."

Section 6 provides for the consideration of adverse effects on production of other coal. Prior to the issuance of any coal lease, the Secretary shall consider any adverse effect which mining of the proposed lease might have on coal produced from private lands, those lands other than lands owned by the United States, due to the potential displacement of such coal from its historical markets. These markets are those which have largely been served and can reasonably and economically be served by coal from private land.

Section 7 authorizes regional coal teams. At the request of the governor of a state containing significant deposits of federal coal, the Secretary of the Interior shall establish a joint Federal-State Regional Coal Team which shall provide guidance for the federal coal management program as it pertains to the state involved. The Secretary may accept the recommendations of the Regional Coal Team with discretion, although if the recommendations are not accepted, the Secretary must publish his reasons in the Federal Register.

Section 8 provides for the use of the short title, establishing that amendments to provisions of the Mineral Lands Leasing Act of 1920 are those to the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain."

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

H.R. 1934 was introduced on April 3, 1985. The Subcommittee on Mining and Natural Resources held an oversight hearing on the federal coal leasing program on May 21, 1985, and conducted a legislative hearing on H.R. 1934 on June 4, 1985. In addition, a hearing was held on similar legislation during the 98th Congress. On July 25, 1985, the Subcommittee on Mining and Natural Resources recommended H.R. 1934, as amended, to the full Committee by voice vote. The Committee on Interior and Insular Affairs ordered it reported, as amended, on May 14, 1986, by a recorded vote of 27

BEST COPY AVAILABLE

yeas to 12 nays. The Committee recommends its approval by the House.

OVERSIGHT STATEMENT

The Committee intends to carefully monitor the implementation of this legislation to assure compliance with the intent of the Act. No recommendations were submitted to the Committee pursuant to Rule X, Clause 2(b)(2).

COST

The Committee recevied the following analysis from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 10, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1934, the Mineral Lands Leasing Act Amendments of 1986, as ordered reported by the House Committee on Interior and Insular Affairs, May 14, 1986. This estimate supersedes CBO's previous letter on H.R. 1934, dated June 9, 1986.

Based on information from the Bureau of Land Management (BLM) and the Office of Technology Assessment (OTA), CBO estimates that the most significant potential impact of H.R. 1934 would result from provisions establishing a royalty phase-in system for certain coal leases. Assuming that royalties on pre-1976 leases would otherwise be paid at the larger value-based rate specified in the 1976 act, we estimate that the phase-in would result in lower federal coal royalty receipts, net of payments to states, of about $50 million in 1987 and totaling about $250 million over the 1987–1991 period, assuming a 10-year phase-in. These results could be affected by the resolution of legal proceedings now underway.

H.R. 1934 would modify several provisions governing federal coal leasing. First, it would amend Section 3 of the Federal Coal Leasing Amendments Act (FCLAA) of 1976 which prohibits the issuance of any federal onshore mineral leases to any holder of a non-complying coal lease (a federal coal lease issued before 1976 that is not producing commercial quantities of coal by December 31, 1986). The bill would allow holders of non-complying leases to acquire new leases for federal minerals other than coal and would allow these same lessees to qualify for new coal leases if they show that they have made significant investments in developing their non-complying leases of if they make annual qualifying payments.

The bill would also amend the current requirement that the Department of the Interior terminate any federal coal lease issued or readjusted after 1976 that is not producing in commercial quantities after ten years. Instead, under the terms of H.R. 1934, lessees could choose whether to have their lease terminated or make payments in lieu of "diligent development" until production began or the lease term ended. For coal leases issued before 1976 and read-

BEST COPY AVAILABLE

justed after the effective date of the bill, or readjusted leases with pending royalty rate disputes, the bill would establish a phase-in system to gradually raise royalty rates. In addition, the bill would change certain requirements for logical mining units (LMU's). Finally, the bill would mandate regional coal teams in coal states to advise the Secretary of the Interior on federal coal leasing procedures.

ROYALTY PHASE-IN FOR CERTAIN LEASES

The largest potential budgetary impact of H.R. 1934 would result from the provisions in section 4 of the bill establishing a phase-in system to gradually raise royalty rates for certain leases. The Federal Coal Leasing Amendments Act of 1976 (FCLAA) authorized the Secretary of the Interior to set royalty payments based on the value of coal mined (usually 12.5 percent). The new rate was to apply to new leases, and the Administration is adjusting upward rates for pre-1976 leases when their terms end. (The application of the new rate to pre-1976 leases is under legal challenge.) Because lease agreements are usually long-term, many pre-1976 leases have not yet reached the point where the royalty rate is to be adjusted. Others have, but some lessees have instituted legal and administrative actions contesting these adjustments.

For pre-1976 coal leases to be readjusted after enactment of H.R. 1934 and for pre-1976 leases already readjusted but with pending actions contesting these adjustments, the bill would provide a phased increase from the low cents-per-ton royalty rate to the higher rate based on value (usually 12.5 percent) specified in FCLAA.

The CBO baseline assumes that all pre-1976 leases will be readjusted at the higher 12.5 percent rate, beginning at the time of their readjustment as specified under current law. Thus, relative to the baseline, a phase-in would result in lower coal royalty receipts. Assuming no major effects on coal production, this loss is estimated to be approximately $100 million in fiscal year 1987 and would total about $500 million over the 1987–1991 period, assuming a 10-year phase-in. Because the Federal Government is required to pay to states half of the royalties, the loss to the Federal Government, net of payments to states, would be about $50 million in 1987 and about $250 million over the 1987–1991 period.

There are a number of factors that could result in a significantly different budgetary impact from the phase-in provision. For example, if a shorter phase-in period is used or if lower royalties result in increased production, the loss of royalty payments would be less. In addition, judicial proceedings are underway to determine whether the FCLAA minimum royalty rate based on value should automatically be applied to pre-1976 leases when they are readjusted. Many companies are currently paying at their low pre-FCLAA cents per ton rate pending resolution of the cases. Therefore, in the short run, if legal actions continue to be unresolved, a phase-in would probably result in more coal royalty receipts because companies are not currently required to pay at the 12.5 percent rate while royalty rate actions are pending.

BEST COPY AVAILABLE

If the courts rule against the across-the-board application of the 12.5 percent rate and determine that BLM must make rate determinations for individual readjustments, the effect of a phase-in is unclear and would depend on how BLM would have acted in the absence of the phase-in requirement on a case-by-case basis. In the long run under this scenario, a phase-in beginning in 1987 would probably result in higher receipts than would be received if companies continued to pay the lower cents-per-ton rates. However, given the uncertainty, it is not possible to project the magnitude of the potential increase.

OTHER FEDERAL BUDGETARY IMPACTS

H.R. 1934 would allow some holders of non-complying coal leases to remain eligible for new federal non-coal leases. The bill would also make it easier for holders of non-complying leases to acquire additional coal leases by allowing them to pay qualifying fees, to show significant expenditures for development of their leases, or to acquire certain new leases through emergency lease sales. Finally, H.R. 1934 would allow lessees to continue to hold non-producing leases, which under current law they would be forced to relinquish, if they make escalating annual payments in lieu of development for 10 years until they begin producing.

By allowing certain lessees to remain eligible to receive new federal non-coal leases, the bill would result in slightly larger annual rental payments. In addition, although there is no basis for projecting the number of lessees that would choose to make payments through 1991 to remain eligible for new federal leases or to avoid non-compliance, additional federal receipts in the form of qualifying payments or annual payments in lieu of diligent development could result, but they are not expected to be large.

Other provisions of the bill are not expected to have a significant budget impact.

EFFECT ON STATE AND LOCAL GOVERNMENTS

State and local governments receive 50 percent of federal mineral receipts and would share in any additional qualifying payments or payments in lieu of diligent development. Similarly, state and local governments would share in the gain or loss of receipts that would result from the royalty phase-in provision of the bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

The Committee finds that while there may be some inflationary impacts indirectly associated with the enactment of this measure, there would be economic benefits resulting from certainty in the leasing program and encouragement of more diligent development of Federal coal resources. Money received from sales, bonuses, roy-

BEST COPY AVAILABLE

alties, rentals and payments of the public lands should provide additional affirmative economic effects.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 25, 1920

(41 Stat 437, as amended, 30 U.S.C. 201 et seq.)

* * * * * * *

COAL

SEC. 2. (a)(1) The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is hereby authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to

BEST COPY AVAILABLE

consider and recognize equitable rights of such occupants or claimants.

(2) [(A) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affilate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.]

(A)(i) The Secretary shall not issue a new competitive coal lease, nor shall he permit the assignment of any such lease or leases, to any person, association, corporation, or to any affiliate thereof (as defined in section 43) which holds any coal lease issued by the United States before August 4, 1976 if during the 10-year period thereafter—

(I) coal has not been produced in commercial quantities from the lease; or

(II) advance royalties in lieu of continued operation have not been paid under section 7(c) for such lease.

(ii) Clause (i) applies only to new competitive coal leases issued under this Act after the enactment of the Mineral Lands Leasing Act Amendments of 1986.

(iii) Clause (i) shall not apply to the extent provided under section 43.

(iv) Clause (i) shall not apply if the new competitive coal lease is issued in an emergency lease sale (as defined by the Secretary by rule.)

(v) Clause (i) shall not apply in the case of a coal lease issued prior to August 4, 1976, which have been consolidated into a logical mining unit which is producing coal in commercial quantities at the time of the issuance of the new competitive coal lease.

(vi) Nothng in this subparagraph affects the authorities of section 30.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this Act shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this Act before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the day the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use

BEST COPY AVAILABLE

plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because the non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. *The Secretary shall also consider any adverse effects on coal produced from private lands due to the potential displacement of such coal from historical markets as a result of lease issuance. As used in the preceding sentence, the term "private lands" means lands other than lands owned by the United States and the term "historical market" means any market which has largely been served and can reasonably and economically be served by coal from private lands.* Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by

BEST COPY AVAILABLE

deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operation plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 1857 and following).

(F) At the request of the Governor of the State in each coal region containing significant deposits of coal owned by the Federal Government, the Secretary shall establish a joint Federal-State Regional Coal Team which shall guide all phases of Federal competitive coal leasing procedures and serve as a forum for resolving regional conflicts involving coal leasing. The responsibilities of the teams tracts, ranking and selecting tracts, conducting environmental analysis, recommending to the Secretary tracts to be offered for lease, timing of sales and lease stipulations, and evaluating the adequacy of data to support leasing decisions. The teams shall, at regular intervals, advise the Secretary on methods to improve the efficiency and effectiveness of the Federal coal leasing program. The teams shall take all necessary steps to inform the public of pending decisions, to solicit the views of the public and to respond to comments received. The Secretary may accept the recommendations of the team except in the case of an overriding national interest or in the case that he accepts the advice of the affected State Governor pursuant to this section. If the Secretary does not accept the recommendation of the team, the Secretary shall publish in the Federal Register his reasons.

(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and

BEST COPY AVAILABLE

shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

(2) A license may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jursidiction over the surface of the lands subject to this Act. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nominal interests in those lands.

(3) The license shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.

(c) No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporation; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam. Nothing in this section shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines.

(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal

BEST COPY AVAILABLE

resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous (*except that noncontiguous areas within reasonable proximity of each other and which are determined by the Secretary to be incorporated into a single operation under the effective control of a single operator may also be included in a logical mining unit*).

(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary [which shall not be more than forty years].

(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

(4) The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

(7) No logical mining unit shall be approved by the Secretary if [the total acreage (both Federal and non-Federal] *the total Federal acreage* of the unit would exceed twenty-five thousand acres.

(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)).

* * * * * * *

[SEC. 7. (a) A coal lease shall be for a term of twenty yeas and for so long thereafter as coal is produced annually in commerciai quantities from the lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by under-

BEST COPY AVAILABLE

ground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of tewnty years and at the end of each ten-year period thereafter if the lease is extended.

(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of ten years.

(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.]

SEC. 7. CONDITIONS OF LEASE; PAYMENTS AND ROYALTIES.

(a) BASIC LEASE CONDITIONS.—

(1) TERM OF LEASE.—A coal lease issued under this Act shall be for a term of 20 years and for so long thereafter as the condition of continued operation is met.

(2) READJUSTMENT.—Rentals and royalties and other terms and conditions of a coal lease under this Act shall be subject to readjustment at the end of its primary term of 20 years and at the end of each 10-year period thereafter.

(e) ANNUAL RENTALS.—The Secretary shall by regulation prescribe annual rentals on coal leases issued under this Act.

(4) ROYALTIES.—(A) A coal lease issued under this Act shall require payment of a royalty in such amount as the Secretary shall establish. The amount shall not be less than 12.5 percent

BEST COPY AVAILABLE

of the value of coal (as defined by regulation) unless the Secretary establishes a lesser amount under subparagraph (B).

(B) The Secretary may establish a royalty of less than 12.5 percent for coal recovered by underground mining operations or from special bituminous coal mines which meet the requirements of section 527 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1277), and applicable regulations.

(5) DILIGENT DEVELOPMENT.—(A) Each coal lease issued under this Act shall be subject to a condition of diligent development of the mine or mines (except where mining of recoverable coal reserves under the lease has been completed).

(B) The diligent development condition shall require production of recoverable coal reserves in commercial quantities by the end of a 10-year period. The 10-year period begins at lease issuance (except that in the case of leases issued before August 4, 1976, the period begins at first readjustment after August 4, 1976). In calculating the 10-year period there shall be excluded any time during which development is interrupted by strikes, the elements, casualties, or other causes not attributable to the lessee.

(C) Each coal lease issued under this Act shall be terminated by operation of law upon the lessee's failure to either (i) meet the condition of diligent development or (ii) make payments under subsection (b).

(6) CONTINUED OPERATION.—(A) Each coal lease issued under this Act shall be subject to a condition of continued operation of the mine or mines (except where mining of recoverable coal reserves under the lease has been completed).

(B) The condition of continued operation requires the production of commercial quantities of recoverable coal reserves in the years following the achievement of diligent development. The condition requires production in commercial quantities in each of the first 2 years immediately following achievement of diligent development. After this 2-year period, the condition requires an average production of commercial quantities. The average shall be computed on a 3-year basis consisting of the year in question and the 2 preceding years. In the computation of time under this subparagraph there shall be excluded any time during which development is interrupted by strikes, the elements, casualties, or other causes not attributable to the lessee.

(7) OTHER TERMS AND CONDITIONS.—A coal lease under this Act shall include such other terms and conditions as the Secretary shall determine.

(b) PAYMENTS IN LIEU OF DILIGENT DEVELOPMENT.—

(1) COMMENCEMENT OF PRODUCTION WITHIN 10 YEARS.—A coal lease issued under this Act that does meet the condition of diligent development within the required 10-year period shall not be terminated at the end of such 10-year period if payments in lieu of diligent development are made in accordance with this subsection. Such termination shall be postponed through such payments for an additional period during which such payments are made. Such additional period shall not exceed 10 years. Any such lease shall be terminated at the expiration of the ad-

BEST COPY AVAILABLE

ditional period unless the lease is producing coal in commercial quantities at the expiration of the additional period.

(2) AMOUNT OF PAYMENT.—Payments under this subsection shall commence with the first year of the additional period. Payments shall be equal to the following.

(A) In the first payment year, $0.001 per ton of recoverable coal reserves.

(B) In the second payment year, $0.002 per ton of recoverable coal reserves.

(C) In the third payment year, $0.003 per ton of recoverable coal reserves.

(D) In the fourth payment year, $0.004 per ton of recoverable coal reserves.

(E) In the fifth payment year, $0.005 per ton of recoverable coal reserves.

(F) In the sixth payment year, $0.006 per ton of recoverable coal reserves.

(G) In the seventh payment year, $0.007 per ton of recoverable coal reserves.

(H) In the eighth payment year, $0.008 per ton of recoverable coal reserves.

(I) In the ninth payment year, $0.009 per ton of recoverable coal reserves.

(J) In the tenth payment year, $0.01 per ton of recoverable coal reserves.

(3) APPLICATION OF SECTION 35.—For purposes of section 35 of this Act (relating to payments to States), a payment under this subsection shall be treated as money received from sales, bonuses, royalties, and rentals of the public lands.

(4) COORDINATION WITH OTHER REQUIREMENTS.—No payment in lieu of diligent development under this subsection may be used to reduce future production royalties.

(c) ADVANCE ROYALTIES IN LIEU OF CONTINUED OPERATION.—

(a) SUSPENSION OF CONDITION.—The Secretary of the Interior may suspend the condition of continued operation under this subsection. Such suspension may not continue for more than a total of 10 years. The Secretary may suspend the condition only if advance royalties are paid under this subsection and if he determines that the public interest will be served by the suspension. The Secretary may terminate the suspension at any time. The Secretary shall provide 6 months notification to the lessee of any such termination.

(2) AMOUNT OF ADVANCE ROYALTIES.—Advance royalties under this subseciton shall be no less than the production royalty rate which would otherwise be applied. The advance royalties shall be computed on a fixed reserve to production ratio (determined by the Secretary).

(3) RECOUPABILITY.—The amount of any production royalty for a lease in any year shall be reduced (but not below zero) by the amount of any advance royalties paid under this subsection for such lease. To the extent that advance royalties have been used to reduce production royalties for any year they may not be used to reduce production royalties again in a later year. No advance royalty paid during the initial 20-year term of lease shall

BEST COPY AVAILABLE

be used to reduce a production royalty after the 20th year of a lease.

(d) OPERATION AND RECLAMATION PLAN.—Within a reasonable period (as determined by the Secretary) prior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.

(e) EFFECTIVE DATE.—Except as provided in subsection (f), the provisions of this section shall take effect with respect to all coal leases issued or readjusted under this Act after August 4, 1976.

(f) SPECIAL EFFECTIVE DATE FOR CERTAIN LEASES.—

(1) PRE-76 LEASES.—This subsection applies to leases issued before August 4, 1976, (hereinafter referred to as "pre-1976 leases"). The 12.5 percent royalty rate requirement of subsection (a)(4)(A) (or the royalty rate requirement of subsection (a)(4)(B)) shall take effect for a pre-1976 lease only as provided in this subsection.

(2) READJUSTMENTS AFTER ENACTMENT.—If the first readjustment of a pre-1976 lease takes place on or after enactment of the Mineral Lands Leasing Act Amendments of 1986, the royalty rate requirements of subsection (a)(4) shall not take effect until 10 years after such readjustment.

(3) EARLIER READJUSTMENTS.—For a pre-1976 lease readjusted before enactment of the Mineral Lands Leasing Act Amendments of 1986, the royalty rate requirement of subsection (a)(4) shall not take effect until 10 years after such readjustment if the royalty rate is the subject of one or both of the following—

(A) A protest or objection pending (as of the date of enactment of the Mineral Lands Leasing Act Amendments of 1985) before the Bureau of Land Management or the Interior Board of Land Appeals.

(B) An action pending (as of such date of enactment) in a United States District Court or Circuit Court of Appeals.

(4) PHASE-IN OF ROYALTY RATE.—In the case of any lease referred to in paragraph (2) or (3), the Secretary shall by rule or order establish royalty rates for each year before the royalty rate requirement of subsection (a)(4) takes effect. The royalty rate for each such year shall provide for equal annual incremental increases. The starting point for the first annual incremental increase shall be the royalty rate in effect on August 4, 1976. The increment for each year shall be established at a level such that a royalty rate in accordance with the requirements of subsection (a)(4) shall be in effect at the end of 10 years after the readjustment referred to in paragraph (2) or (3), as the case may be.

* * * * * * *

SEC. 13. ISSUANCE OF COAL LEASES TO CERTAIN EXISTING LESSEES.

(a) QUALIFICATION FOR ISSUANCE OF NEW COMPETITIVE LEASES.—An ineligible lessee qualifies for the issuance of a new competitive coal lease notwithstanding section 2(a)(2)(A)(i), if the Secretary de-

BEST COPY AVAILABLE

termines that either of the following requirements is met for each noncomplying coal lease held by the ineligible lessee:

(1) The qualifying payment requirement of subsection (b).

(2) The significant expenditure requirement of subsection (c).

(b) QUALIFYING PAYMENTS.—

(1) IN GENERAL.—An ineligible lessee may meet the qualifying payment requirement for a noncomplying coal lease. To meet this requirement the terms and conditions of the noncomplying coal lease shall be amended, at the election of the lessee, to require annual qualifying payments to the Secretary in accordance with this subsection.

(2) STARTING DATE.—Except as provided in paragraph (3), qualifying payments under this subsection shall begin within 30 days after the date on which the lessee becomes an ineligible lessee within the meaning of this section.

(3) LATER ELECTION.—If qualifying payments do not begin by the date referred to in paragraph (2), the lessee may elect to begin making qualifying payments at a later date in a larger amount as provided in paragraph (4)(B). Such later date may not be more than 5 years after the date on which the lessee becomes an ineligible lessee within the meaning of this section.

(4) AMOUNT.—

(A) IN GENERAL.—If an election to make qualifying payments under this subsection for any noncomplying coal lease is made by the starting date referred in paragraph (2), the amount of the annual qualifying payment for that lease shall be determined by multiplying the payment rate in table 1 by the number of tons of recoverable coal reserves covered by the lease.

TABLE 1

Payment Year	*Payment Rate*
First	*$0.001*
Second	*$0.002*
Third	*$0.003*
Fourth	*$0.004*
Fifth	*$0.005*
Sixth	*$0.006*
Seventh	*$0.007*
Eighth	*$0.008*
Ninth	*$0.009*
Tenth	*$0.010*

(B) HIGHER PAYMENT.—If an election to make qualifying payments under this section for any noncomplying coal lease is made at a date referred to in paragraph (3), the amount of the annual qualifying payment for that lease shall be $0.015 for each ton of recoverable coal reserves covered by the lease.

(5) TERMINATION DATE.—No qualifying payment shall be required for any noncomplying coal lease after the earlier of the following:

(A) The date of termination of the lease.

BEST COPY AVAILABLE

(B) The date of relinquishment of the lease to the Secretary.

(C) The date production in commercial quantities is achieved from the lease or from a logical mining unit into which the lease has been consolidated.

(6) APPLICATION OF SECTION 35.—(A) For purposes of section 35 (relating to payments to States), a qualifying payment under this subsection shall be treated as money received from sales, bonuses, royalties, and rentals of the public lands.

(B) In determining the amount of payments to States under section 35, the amount of such payments shall not be reduced by any administrative costs incurred by the United States.

(7) COORDINATION WITH OTHER REQUIREMENTS.—If any person making a qualifying payment under this subsection for any lease in any year is also required to make an annual payment in lieu of diligent development under section 7(b) for that lease, the payment under this subsection shall be treated as satisfying the payment in lieu of diligent development requirement of section 7(b) for the year concerned. No qualifying payment under this subsection may be used to reduce future production royalties.

(c) SIGNIFICANT EXPENDITURE.—To meet the significant expenditure requirement for a noncomplying coal lease the lessee must demonstrate that he has made a significant expenditure of funds (as determined by the Secretary) for exploration or planning under the lease or for development and construction of operating facilities in the mine plan area for mining on the lease, for for any combination of the foregoing. The demonstration must be made within 30 days after the date on which the lessee becomes an ineligible lessee within the meaning of this section. The expenditure shall at least be $0.055 for each ton of recoverable coal reserves covered by the lease.

(d) DEFINITIONS.—As used in this section:

(1) AFFILIATE.—The term "affiliate", when used with respect to any entity, means any person which controls, is controlled by, or is under common control with, such entity. Such term includes any subsidiary of the entity.

(2) INELIGIBLE LESSEE.—The term "ineligible lessee" means a person, association, or corporation which is not eligible (by reason of section 2(a)(2)(A)(i) of this Act and section 320 of Public Law 99-190) to receive a new competitive coal lease. The term also includes any affiliate of any such entity.

(3) NONCOMPLYING COAL LEASE.—The term "noncomplying coal lease" means a lease issued before August 4, 1976, which under section 2(a)(2)(A)(i) and section 320 of Public Law 99-190 disqualifies the lessee from receiving a new competitive coal lease.

SEC. 11. DEFINITIONS.

For the purposes of the coal leasing provisions of this Act—

(1) COMMERCIAL QUANITITIES.—The term "commercial quantities" means one percent of the recoverable coal reserves under a lease or within a logical mining unit.

BEST COPY AVAILABLE

(2) DILIGENT DEVELOPMENT.—The term "diligent development" means the requirement established under section 7(a)(5) of this Act.

(3) CONTINUED OPERATION.—The term "continued operation" means the requirement established under section 7(a)(6) of this Act.

SEC. 45. SHORT TITLE.

This Act may be cited as the "Mineral Lands Leasing Act of 1920".

BEST COPY AVAILABLE

SUPPLEMENTAL VIEWS

During Full Committee markup of H.R. 1934, I offered an amendment to recognize that pre-1976 leases deserve some relief from the 12½ percent royalty which resulted from the 1976 enactment of the Federal Coal Leasing Act Amendments (FCLAA). I withdrew the amendment, with the assurance from that Chairman that he would be willing to work with me to reconcile my amendment to the similar intent of the royalty phase-in provision which is in the bill as reported.

My proposal establishes an alternative procedure for readjustment of certain Federal coal leases issued by the Secretary prior to enactment of FCLAA on August 4, 1976. The provision would apply to about 8 percent of the nearly 540 pre-FCLAA Federal coal leases where Federal lessees had substantially relied upon prior law and, in many cases, invested millions of dollars to develop the leases. Substantial reliance necessary to invoke the provision would be demonstrated in one or more of the following ways:

(1) The provision would apply to leases brought into production—that is, where coal was being severed from the lease—on or before August 4, 1976.

(2) The provision would apply to leases where mine permit applications were filed with a state or federal agency on or before August 4, 1976, and were diligently pursued thereafter.

(3) The provision would apply to leases for which long-term supply agreements were entered into on or before August 4, 1976 for sale of coal from those leases.

The language would allow the lessee to elect readjustment under this provision, or under the royalty phase-in provision, within thirty (30) days after receipt by the lessee of notification from the Secretary that the lease is to be readjusted. For those qualifying leases which are being contested either before the Department or the Courts, a lessee could elect to pursue the relief provided by this subsection if he notifies the Secretary of his election within sixty (60) days after enactment of this Act.

For each qualifying lease the Secretary would be required, prior to acting on the royalty readjustment, to examine pertinent facts surrounding the lease prior to setting a fair and equitable royalty. The procedure would be administratively practical and would result in fair and equitable royalties from the perspective of the Federal government and the lessee, based on existing conditions.

This alternative approach, which is more narrow in scope that the royalty phase-in portion of the bill, requires the Secretary to establish royalties necessary to meet "materially changed conditions" arising subsequent to lease issuance or the last readjustment, whichever is later. The "materially changed condition" criteria is used because it is consistent with the standard adopted by

BEST COPY AVAILABLE

Congress when it enacted the coal readjustment provision of the Mineral Leasing Act of 1920.

In determining "materially changed conditions" the Secretary's analysis must include, but is not limited to, royalties that are being paid for non-federal leases in the vicinity of the readjusted lease; mining costs and other competitive and marketability factors; the relationship of the increases to historical royalties and rentals; the impact of proposed increases on electric consumers; transportation costs; inflation, and other relevant facts and circumstances as the Secretary may deem appropriate.

My amendment ensures that these provisions apply not only to Federal coal lease readjustments commenced after the enactment of this provision, but also to those pre-1976 leases presently in the process of being readjusted.

Based upon the findings of the Linowes Commission and evidence considered by the Committee, the 12½ percent royalty imposed at the end of the 10-year phase-in period is unreasonably high. Imposition of such a royalty will likely lead to decreased production of federal coal and will clearly lead to increased coal costs to public utilities and higher electric costs for consumers. In Colorado, we have already seen evidence that if the 12½ percent royalty is mandatory, current long term contracts may well be broken, federal coal may not be mined, and royalty revenues to the Federal government would not be paid. The additional result would be devastated employment in Western Colorado and other states. Already, some utilities are litigating in Federal District Courts in at least six states.

I intend to offer this limited alternative relief proposal on the House Floor. This is a fair, equitable and limited proposal which can work in conjunction with the royalty phase-in concept, to provide an alternative for relief to qualified holders of pre-FCLAA leases who substantially relied upon prior law requiring the Secretary to consider pertinent facts prior to readjusting a lease.

MICHAEL L. STRANG.

BEST COPY AVAILABLE

DISSENTING VIEWS

We submit these views on H.R. 1934 because we believe the bill, as reported, is a very unsound and seriously flawed piece of public land legislation. Indeed, we believe no compelling case has been made for enactment of this or any similar legislation.

H.R. 1934 would reward speculators in Federal coal resources and divert badly-needed Federal and State revenues into private hands. Among the compelling reasons to oppose H.R. 1934 are the following:

The bill allows a handful of coal companies to continue to hold—at virtually no cost—7.8 billion tons of Federal coal reserves for future development when it is most profitable to those companies.

The bill rolls back the royalty payments that these coal companies must make on hundreds of existing Federal leases. Ironically, these royalty reductions benefit those who paid the least for this coal, while those who have paid more than $100 million in leased bonuses during the past six years will receive no benefit.

The bill gives new life to dozens of Federal leases located on the boundaries of national parklands and in critical wildlife areas. Without this legislation, most of these leases—which never should have been issued—would be relinquished at the end of the year.

While this legislation advances the private agenda of several coal companies, it is hard to discern the public benefit which flows from changing the existing laws governing coal development on Federal lands. According to the Congressional Budget Office, H.R. 1934 could lead to a loss of $500 million in Federal revenues by 1991.

For the reasons outlined below, we strongly oppose H.R. 1934 and take this opportunity to explain our opposition.

Present Federal Coal Policy

Over the past 15 years, our Nation has forged a bipartisan and balance policy for managing the vast Federal coal reserves located predominately in the West. This policy has sought to further the legitimate public interest in developing these energy resources, while providing a fair return to the public, protecting the environment, and compensating the localities and States for development impacts. This policy was established in the Federal Coast Leasing Act Amendments of 1976 ("FCLAA") which was enacted by the Congress over President Ford's veto.

Our present coal leasing policy is based on four fundamental goals:

(1) Federal coal should be developed within a reasonable time frame, and not held for speculation.

BEST COPY AVAILABLE

(2) The Federal government and the affected states should receive a fair rate of return for both the right to develop and the actual production of Federal coal.

(3) To the maximum feasible extent, Federal coal resources should be made available to the private sector through a competitive bidding process.

(4) Coal development should be undertaken pursuant to a land use planning process which balances environmental and economic objectives.

Our present coal leasing policy and the 1976 amendments, have helped reshape coal production from Western public lands. After years of nonproduction and even speculation, Western Federal coal production skyrocketed from 33 millions tons in 1976 to 160 million tons in 1985. Royalties paid to Federal and state treasuries grew from $6 million in 1976 to $104 million in 1985. Coal supply outstripped demand, leading to increased competition among producers, and lower energy and electricity prices.

Coal Industry Opposition

Despite this record of success, the coal industry has mounted a major attack on FCLAA. Clearly, some coal companies prefer the old system where effective title to valuable resources was turned over to private hands for a pittance and where the lessee could make development decisions based solely on maximizing profits with litte concern for the revenues to Federal or State treasuries, or for the need to protect the environment.[1]

Impact of Changes in Law

Section 3 Changes.—Section 3 of the existing law provides that holders of non-producing leases should be prohibited from bidding on any other Federal mineral resources. H.R. 1934 attempts to address this problem by deleting this prohibition, and requiring instead that nonproductive leaseholders pay a "holding fee" which begins at one-tenth of a cent per ton in the first year and climbs in yearly increments to one cent per ton in the tenth year. However, this holding fee is set at an unreasonably low level. Indeed, the fee is less than the amount recommended by the Linowes Commission,[2] less than half the fee discussed by the Office of Technology Assessment (OTA)[3] and supported by the Western Governors. Combined with other exceptions in H.R. 1934, it is unlikely that any ineligible company will pay a single cent in holding fees, and thus develop their non-producing leases.

Section 7 Changes.—H.R. 1934 would also change the Section 7 diligence provisions. While the ten year diligence deadline in the

---

[1] To be sure, elements of FCLAA could stand fine-tuning. For example, there has been testimony that the logical mining unit provisions of the law could be improved, and that the requirements for early submission of reclamation plans should be modified. But addressing issues such as those does not require the massive overhaul of FCLAA that this bill and the coal industry seek.

[2] The Linowes Commission, officially designated the "Commission on Fair Market Value Policy for Federal Coal leasing" (P.L. 98-63), recommended a fee based on the production royalty that would have been paid had the lease been developed. In the first year, the fee would be based on an assumed production of 0.5% of recoverable reserves, rising to 2.5% in the fifth year and remaining constant until year ten.

[3] U.S. Congress, Office of Technology Assessment, *Potential Effects of Section 3 of the Federal Coal Leasing Amendments Acts of 1976—A Special Report*. OTA-ITE-300, March 1986.

BEST COPY AVAILABLE

existing law is maintained, under H.R. 1934 a nondiligent lease can be extended for an additional ten years by yearly payments. Payments are one-tenth of a cent per ton in the first year, escalating in tenth of a cent increments to one cent per ton in the tenth year. These changes will impact the holders of leases issued prior to 1976. However, these leases will not begin paying a single cent under this change in Section 7 until they are at least 30 years old. Further, they will enjoy a forty year run before any commercial production is required. Many of the undeveloped pre-FCLAA leases will not face Section 7 payments until the last years of this century and will be available for development until 2005–2010.

The combined effect of the proposed changes in Section 3 and Section 7 for holders of pre-FCLAA leases are enormous. For example, a typical lease issued in 1966 and scheduled for readjustment this year would have faced the Section 3 deadline at the end of 1986. Under H.R. 1934, a lease could be extended for twenty more years at a cost of only 5.5 or 11 cents per ton.

Phase-in of Royalties.—H.R. 1934 also provides for a generous phase-in of royalties paid by 331 pre-FCLAA leases subject to readjustment. Under the bill, in year one, the lessee will pay the royalty rate that was in effect on August 4, 1976. In year two, it will pay the pre-FCLAA royalty plus 10 percent of the difference between the old royalty and the FCLAA royalty. Only in the eleventh year will the 12.5 percent rate finally be attained. If production were steady over the decade, the lessee would save 56 percent of the difference between the 15 or 20 cent per ton pre-FCLAA royalty and the FCLAA royalty.

The revenue loss from the royalty phase-in provisions will be substantial. Nearly 80 percent of current Federal production comes from pre-1976 leases. A total of 163 have already been readjusted; 98 already qualify for the retroactive phase-in, and the remainder could qualify. Another 214 are scheduled for readjustment in the next two years. All of these leases would have been paying the 12.5 percent royalty rate from day one under present law. If H.R. 1934 were enacted, they would pay substantially less, depending on the status of the lease.

To show the potential loss to the Federal and State treasuries, take an example of a lease producing approximately 9 million ton of Federal coal and paying $1.3 million in royalties, based on a 15 cents per ton royalty. On readjustment, this lease could be required to pay approximately $8.4 million.[4] Under the royalty phase-in provisions, this lease would pay $1.3 million in the first year after readjustment. This would be a loss to the Treasury of $7 million. In the second year it would pay $2 million, costing the Treasury $6.3 million. Over a ten year period, assuming constant price and production rate, the loss to Federal and State treasuries would be approximately $39.5 million from a single lease.

Wyoming Mines.—Finally, H.R. 1934 contains a specific royalty reduction provisions for two mines in Wyoming, the Skull Point Mine, owned by FMC, and the Kemmerer Mine, owned by Chevron. These mines are "special bituminous mines" as defined in Sec-

[4] Based on an average selling price of $7.50 per ton.

BEST COPY AVAILABLE

tion 527 of Surface Mining Control and Reclamation Act (SMCRA). Special bituminous mines are often referred to as "open pit" mines. Beginning on the surface, they extract coal from sharply dipping beds. Reclamation under standards applied to other surface mines is virtually impossible. Thus, SMCRA recognizes the special status of these mines by allowing them to operate with less stringent and less costly reclamation requirements.

No information was ever presented to the Committee to indicate why these mines should be eligible to pay a lower royalty rate. No information was presented to indicate that these mines were currently unprofitable or uncompetitive. Indeed, the available information indicates just the opposite.

While revenue losses associated with this amendment are less than those associated with the royalty phase-in, they are significant. Skull Point has a capacity of 1.5 million tons per year, Kemmerer of 500,000 tons to 1 million tons. Each produces high value coal selling in the $25 per ton range. Under the amendment, the Secretary may establish a royalty rate less than 12.5 percent. If, for example, the Secretary reduced the royalty rate by one percent for the Skull Point mine, it could possibly reduce receipts by as much as $500,000 per year.

Conclusion

If H.R. 1934 is passed, it will repeal the successful coal leasing policy established in 1976. A few favored companies will continue to hold billions of tons of Federal coal resources at little or no cost. Royalty revenues to the Federal government and States will fall despite a growing need, and diligence deadlines will be pushed back another decade.

Enactment of H.R. 1934 will only encourage coal companies not to comply with the law. Indeed, it is possible that if H.R. 1934 is enacted, these same coal companies will be back before Congress in another 10 years arguing for yet another extension, yet another phase-in, yet another bailout. They will plead their same arguments, misrepresenting how long it takes to develop mines, lamenting over the expenditures they have made in nonproducing or nonexistent facilities, and arguing that subsidization of nonproduction somehow encourages energy development.

We strongly urge the defeat of H.R. 1934.

GEORGE MILLER.
MEL LEVINE.
JIM MOODY.
AUSTIN J. MURPHY.
BRUCE F. VENTO.
SAM GEJDENSON.
JOHN F. SEIBERLING.
DALE E. KILDEE.
ED MARKEY.
JIM WEAVER.
PETER H. KOSTMAYER.

BEST COPY AVAILABLE